

August 26, 2013

Mr. Carl Daly  
Director, Air Program  
Environmental Protection Agency  
Region 8  
Mailcode 8P-AR  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Submitted online at <http://www.regulations.gov>

**Re: Docket ID No. EPA-R08-OAR-2012-0026 – Comments of Wyoming Industrial Energy Consumers to the Environmental Protection Agency.**

Dear Mr. Daly:

Wyoming Industrial Energy Consumers (“WIEC”), whose members include Air Products and Chemicals, Inc., BrietBurn Operating LP, Church & Dwight Co., Inc., Encana Oil & Gas (USA) Inc., Enterprise Products Operating LLC, ExxonMobil Power and Gas Services Inc., FMC Corporation, J.R. Simplot Company, Marathon Oil Company, Merit Energy Company, Monsanto, OCI Wyoming L.P., Ryckman Creek Resources LLC, Sinclair Oil Corporation, Solvay Chemicals, and others, is comprised of large electricity consumers that own and operate manufacturing and other large facilities within the service territory of PacifiCorp in the State of Wyoming. WIEC’s members employ significant numbers of Wyoming residents and collectively pay approximately one-half of PacifiCorp’s total electric bills in Wyoming. WIEC is providing these comments in response to the Environmental Protection Agency (“EPA”)’s proposed rulemaking that offers to partially approve and partially disapprove Wyoming’s regional haze State Implementation Plan (“SIP”) and implement a Federal Implementation Plan (“FIP”). See 78 Fed. Reg. 34738, 34738 (June 10, 2013).

As set forth in more detail below, WIEC recommends that the EPA reconsider certain stringent nitrogen oxide (“NO<sub>x</sub>”) emissions limits to avoid unnecessary ratepayer expenditures of hundreds of millions of dollars. Even if it declines to reconsider the limits, the EPA should encourage PacifiCorp to consider alternative means of satisfying the Clean Air Act while allowing utilities and ratepayers to avoid incurring large, unjustifiable, and potentially imprudent expenses. Recent examples such as the solutions adopted for the San Juan Generating Station in New Mexico and Naughton Unit 3 in Wyoming demonstrate the immense value of creative alternatives.

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## **I. Background.**

In compliance with federal requirements designed to address regional haze pursuant to the Clean Air Act, the State of Wyoming submitted its SIP for the EPA's consideration on January 12, 2011. On June 4, 2012, the EPA proposed to partially approve and partially disapprove the Wyoming SIP. *See* 77 Fed. Reg. 33022 (June 4, 2012). Among its 2012 proposals, the EPA proposed the following emissions limits and technologies to satisfy Best Available Retrofit Technology ("BART") requirements:

- A NO<sub>x</sub> emissions limit of 0.26 lb/mmBtu through installation of low NO<sub>x</sub> burners ("LNBs") on each of Naughton Units 1 and 2.
- A NO<sub>x</sub> emissions limit of 0.19 lb/mmBtu through installation of a selective non-catalytic reduction system ("SNCR") in Dave Johnston Unit 3.
- A NO<sub>x</sub> emissions limit of 0.15 lb/mmBtu through installation of an LNB in Dave Johnston Unit 4.

In keeping with Wyoming's SIP, PacifiCorp, among other compliance actions, has already installed LNBs in Naughton Units 1 and 2, Dave Johnston Units 3 and 4, and the Wyodak facility with the expectation that the LNBs would satisfy the applicable NO<sub>x</sub> emissions limits. PacifiCorp has indicated that its expenditures through 2012 for these and other air quality controls in Wyoming alone have already totaled \$900 million.<sup>1</sup>

In its 2013 proposal, however, the EPA now proposes to greatly increase the stringency of the emissions limits and concomitantly change the type of controls needed to satisfy BART for several Wyoming coal plants. Of particular concern, the EPA proposes the following changes:

- Increase the stringency of the NO<sub>x</sub> emissions limit by reducing it from 0.26 lb/mmBtu to 0.07 lb/mmBtu and require the installation of a selective catalytic reduction system ("SCR") in each of Naughton Units 1 and 2.
- Change Wyoming's proposed 0.28 lb/mmBtu emissions limit, and the EPA's own 2012 proposed 0.19 lb/mmBtu emissions limit, to 0.07 lb/mmBtu and require the installation of an SCR in Dave Johnston Unit 3.
- Change the proposed 0.15 lb/mmBtu emissions limit to 0.12 lb/mmBtu and require the installation of an SNCR rather than an LNB in Dave Johnston Unit 4.

PacifiCorp estimates that the 2013 modifications now proposed by the EPA will cost ratepayers \$300 million or more in additional compliance costs.<sup>2</sup>

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<sup>1</sup> *See, e.g.*, Comments of Micheal Dunn, President & Chief Executive Officer, PacifiCorp Energy, Wyo. Reg'l Haze Hr'g (July 17, 2013).

<sup>2</sup> *See id.*

## II. Recommendation for Reconsideration of Emission Limits and Encouragement of Lowest-Cost Options.

### *A. Reconsideration of Emissions Limits.*

WIEC recommends that the EPA reconsider its more stringent emission limits as well as the related requirement that more SCRs and SNCRs be installed than were anticipated either by the EPA in 2012 or the State of Wyoming in 2011. Pursuant to Section 169A(g)(2) of the Clean Air Act and 40 C.F.R. § 51.308(e)(ii)(A), states must consider the following factors when determining compliance with BART:

- (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

78 Fed. Reg. 34738, 34743. Given the high costs and low benefits resulting from the new EPA proposals, WIEC believes that the EPA has given insufficient weight in particular to the costs of compliance. *See* 78 Fed. Reg. 34738, 34765 (noting the appropriateness of considering “economic effects” and “affordability” in the BART analysis). As noted above, the EPA’s proposed changes will result in over \$300 million in compliance costs above and beyond what Wyoming had initially proposed – and above and beyond the \$900 million PacifiCorp has already spent in attempting to comply with the Wyoming SIP and the EPA’s original proposals.

Wyoming residential, commercial, industrial, and irrigation customers would be responsible for paying the additional hundreds of millions of dollars. Indeed, as WIEC pays approximately one-half of PacifiCorp’s Wyoming electric bills, WIEC’s members alone would, under the EPA’s 2013 proposals, experience many millions of dollars in previously unanticipated increases in electric bills over the next few years. Further, Wyoming would be hit much harder than most other states: as Wyoming is the least populous state in the United States, the unduly large increase in electric bills that the EPA now seeks to impose must be absorbed by a relatively small number of ratepayers.

Disproportionate to the heavy burden of such large expenditures, WIEC further understands that this additional \$300 million in ratepayers’ money is not designed to promote any public health benefits.<sup>3</sup> Rather, the sole expected benefit would be, by the EPA’s own calculations, an imperceptible visibility improvement.<sup>4</sup> Given the marginal benefits and the

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<sup>3</sup> *See* 42 U.S.C. § 7149(a)(1) (describing the federal goal of “remedying . . . impairment of visibility”); 42 U.S.C. § 7149(b)(2)(A) (requiring consideration of the “best available retrofit technology” to address “impairment of visibility”).

<sup>4</sup> For a detectable change in visibility, the reduction in haziness generally must be of at least one deciview. *E.g.*, 78 Fed. Reg. 34742. Even by the EPA’s own calculations, moving from Wyoming’s proposed LNBs to SNCRs or SCRs results in only a fractional additional benefit per unit that does not provide anything close to an extra deciview of visibility improvement. *See* 77 Fed. Reg. 34777 (Johnston Unit 3); *id.* at 34779 (Johnston Unit 4); *id.* at 34782 (Naughton Units 1 and 2); *id.* at 34784 (Wyodak Unit 1).

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extreme cost involved in the revised 2013 proposals, the EPA must reconsider its 2013 proposals.

***B. Encouragement of Lowest-Cost Options.***

WIEC's comments are expressly limited to, and respond only to, those portions of the EPA's 2013 proposals that apply to PacifiCorp and its affected Wyoming generation plants. With respect to PacifiCorp, WIEC seeks implementation of the lowest-cost alternative that will meet applicable laws and guidelines.

Compliance with the perceived dictates of the Clean Air Act need not be as inflexible as contemplated in the EPA's 2013 proposals. By exploring and employing creative solutions, it is possible to reduce emissions to satisfy the Clean Air Act while ensuring reasonable value and more cost-effective expenditures for PacifiCorp's ratepayers. Two recent examples of successful creative alternatives that will save ratepayers many millions of dollars include the recent proposals of (1) Public Service of New Mexico ("PNM") for its San Juan Generating Station, and (2) PacifiCorp regarding its Naughton Unit 3 in Wyoming.

**1. San Juan Generating Station:** San Juan consists of four coal-fired units and is operated and partially owned by PNM. The EPA proposed that all four of San Juan's coal units be retrofitted with SCRs to achieve required reductions in NO<sub>x</sub> emissions. PNM worked with consultants and other stakeholders to develop and analyze better alternatives. PNM, the EPA, and the State of New Mexico ultimately determined that the best alternative to achieve emissions reductions limits without unduly increasing customer electric bills was to continue operating two coal-fired units with installation of less-expensive SNCRs and to retire the other two units. While estimated costs for installation of the SCRs varied, it appears that ratepayers saved between \$420 million and \$450 million due to this practical and creative solution.

**2. Naughton Unit 3:** As part of its 2013 proposed rulemaking, the EPA has requested that interested parties provide comments related to Naughton Unit 3. 78 Fed. Reg. 34738, 34760. WIEC actively participated in a contested proceeding before the Wyoming Public Service Commission (the "Commission") regarding the installation of emissions controls at Naughton Unit 3 and, in response to EPA's specific request for comments regarding Naughton Unit 3, provides the following brief summary of an alternative solution offered by PacifiCorp that will ultimately save Wyoming ratepayers well over \$200 million.

PacifiCorp initially sought the approval of the Commission to begin installing an SCR and a pulse jet fabric filter or "baghouse" in the Naughton Unit 3 unit, based on its preliminary studies suggesting that the SCR was the least cost, least risk option.<sup>5</sup> WIEC analyzed PacifiCorp's data and performed its own studies. Upon evaluating additional alternatives, updating capital costs, modifying input assumptions, and updating fuel price assumptions, it became clear that at Naughton Unit 3 gas conversion provided a lower cost, lower risk solution

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<sup>5</sup> See App. for a Certificate of Pub. Convenience and Necessity to Construct the Selective Catalytic Reduction System at pp. 6, 12, Wyo. Pub. Serv. Comm'n Docket No. 20000-400-EA-11 (Record No. 12953) (Sept. 16, 2011).

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than the originally proposed SCR and baghouse.<sup>6</sup> Ultimately, PacifiCorp withdrew its application before the Commission and voluntarily revised its plans for Naughton Unit 3 to proceed to convert that facility to natural gas. While that specific outcome was dictated by the particular facts and circumstances surrounding Naughton Unit 3 and could not lawfully have been mandated by the EPA, it illustrates the value of PacifiCorp reevaluating, on an ongoing basis, its alternatives as circumstances and such key factors as fuel costs change. In the case of Naughton Unit 3, ratepayers will benefit from the avoidance of hundreds of millions of dollars in imprudent expenditures.

Notably, the EPA's revised 2013 proposal for Wyoming implicates ten of PacifiCorp's coal-fueled units. Given the number of affected PacifiCorp generation plants, Wyoming appears to be a particularly fertile ground for encouraging the type of alternative solution that satisfied the Clean Air Act with regard to San Juan and Naughton Unit 3. WIEC urges the EPA, in response to these comments, to signal its willingness to consider all feasible compliance options that PacifiCorp may offer (including those that the EPA has no authority to order) to provide the lowest-cost solution for ratepayers in achieving emissions reductions.

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In sum, the EPA should reconsider its proposal to increase the stringency of the emissions limits for PacifiCorp's Wyoming facilities, as its proposal exposes Wyoming ratepayers to hundreds of millions of dollars in increased electricity bills that, according to the EPA's calculations, will result in only imperceptible visibility improvements. The EPA should also seize the opportunity afforded by this rulemaking to encourage and assist PacifiCorp in finding creative ways to comply with regional haze requirements in a fashion that reduces or eliminates unnecessary costs, rather than mandating an approach that accomplishes little more than raising electric rates for all Wyoming consumers.

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<sup>6</sup> For additional detail about the factors that were considered and their impact on the outcome, *see* Surrebuttal Test. of Randall J. Falkenberg, Wyo. Pub. Serv. Comm'n Docket No. 20000-400-EA-11 (Record No. 12953) (May 8, 2012).



Greenwood Village, CO 80111

Telephone: 303-290-1600

Facsimile: 303-290-1606

[rpomeroy@hollandhart.com](mailto:rpomeroy@hollandhart.com)

***COUNSEL FOR WYOMING INDUSTRIAL  
ENERGY CONSUMERS***